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6 PHH MORTGAGE CORPORATION ON
7 BEHALF OF BANCO POPULAR NORTH
8 AMERICA

9 **UNITED STATES BANKRUPTCY COURT**

10 **SOUTHERN CENTRAL DISTRICT OF CALIFORNIA- SAN DIEGO DIVISION**

11 In re

12 Dana Aaron Linett,

13 Debtor.

14 Case No. 19-05831-LA11

15 Chapter 11

16 **OBJECTION TO CONFIRMATION OF
DEBTOR'S JOINT LIQUIDATING
CHAPTER 11 PLAN OF
REORGANIZATION**

17 **Confirmation Hearing:**

18 DATE: November 4, 2021
TIME: 2:30 p.m.
CTRM: 118
DEPT: 2

19 **Subject Property:**

20 14810 Rancho Santa Fe Farm
21 Rancho Santa Fe, CA 92067

22 Banco Popular North America, by and through its authorized loan servicing agent, PHH
23 Mortgage (collectively the “Creditor”) hereby submits this Objection to Confirmation of the
24 Debtor’s Fourth Amended Chapter 11 Plan of Reorganization (the “Objection”).

25 **I. STATEMENT OF FACTS¹**

26 1. Creditor is the beneficiary of a Deed of Trust encumbering the real property
27 located at 14810 Rancho Santa Fe Farm, Rancho Santa Fe, CA 92067 (the “Subject Property”).

28 ¹ Pursuant to Rules 201(b) and 201(d) of the Federal Rules of Evidence, which are made applicable to this proceeding by Rule 9017 of Federal Rules of Bankruptcy Procedure, Creditor requests that the Court take judicial notice of the sworn bankruptcy schedules and other relevant documents filed in the instant case. References to the dockets are in the following format: Docket Entry No. [Number].

1 2. Creditor filed a Proof of Claim in the instant case on December 4, 2019. *See*
 2 Claims Register, Claim No. 6-1. The Proof of Claim provides for a secured claim in the amount
 3 of \$1,329,291.56. *Id.*

4 3. The Debtor filed its Joint Liquidating Initial Chapter 11 Plan (the “Plan”) on
 5 September 16, 2021. *See* Docket Entry No. 273 & 274.

6 4. Creditor’s claim is provided for in the Plan under “Class 1a”. The Plan proposes
 7 to sell the Subject Property at which point Creditor shall be paid in full from the net proceeds of
 8 the sale after costs of sale are paid.

9 5. The Plan does not provide for a date in which a sale needs to occur.

10 6. Creditor now submits its Limited Objection to the Debtor’s Plan.

11 II. ARGUMENT

12 A. **Creditor does not Consent to the Proposed Plan Treatment.**

13 As discussed above, the Plan seeks to sell the Subject Property and pay Creditor off.
 14 Normally, Creditor wouldn’t have an opposition to the proposed treatment. However, this plan is
 15 deficient in the fact that it fails to specify a drop-dead date in which the Subject Property is to be
 16 sold. As the loan is non-escrowed, Debtor is supposed to be making payments on the property
 17 taxes. There is a tax default with regard to the Subject Property. If the Subject Property is not
 18 sold expeditiously, the property becomes less protected due to an increasing property tax bill.
 19 Creditor would request a drop-dead date for which a sale is to occur. If the Subject Property is
 20 not sold by that specified date, then Creditor shall have the ability to proceed with its state law
 21 remedies without the fear of violating of a plan injunction.

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WHEREFORE, Creditor respectfully requests:

1. That confirmation of the Plan be denied;
 2. For such other and further relief as this court deems just and proper

Respectfully submitted,

ROBERTSON, ANSCHUTZ, SCHNEID & CRANE LLP

Dated: October 18, 2021

/s/ Sean C. Ferry

Sean C. Ferry

Attorney for Creditor PHH MORTGAGE
CORPORATION ON BEHALF OF BANCO
POPULAR NORTH AMERICA

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10 In re

Case No. 19-05831-LA11

11 Dana Aaron Linett,

Chapter 11

12 **CERTIFICATE OF SERVICE**

13 Debtor.

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20 I, Sean C. Ferry, hereby declare as follows:

21 I am an active member of the State Bar of California and I am not a party to the above-
22 captioned case; my business address is 350 10th Avenue, Suite 1000, San Diego, CA 92101.

23 On October 18, 2021, I caused copies of the following document(s) to be served:

24 **1. Objection to Confirmation of Chapter 11 Plan**

25 in the following manner on the parties listed below:

- 26 • **BY FIRST CLASS MAIL:** Pursuant to Federal Rule of Bankruptcy Procedure 7004(b), I
27 enclosed said document(s) in a sealed envelope addressed to the persons at the
28 address(es) listed below, placed first class postage fully prepaid thereon, and deposited
said envelope in a United States mailbox.

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2 P.O. Box 3541
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3 Stephen Temko
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5 Squar Milner LLP
6 San Diego
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8 San Diego, CA 92122

9 Martin A. Eliopoulos
10 Higgs, Fletcher & Mack LLP
401 West A Street, Suite 2600
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13 401 B Street, Suite 1200
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14 • BY ELECTROIC SERVICE (ECF):

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24 ○ United States Trustee ustp.region15@usdoj.gov

25 I declare under penalty of perjury under the laws of the United States of America that the
26 forgoing is true and correct.

27 Executed on this 26th day of April, 2021.

28 /s/ Sean C. Ferry
Sean C. Ferry